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File No. O. Local Bds 47

Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Opinions under the Bombay Local Boards Act, 1923

File No. O. Local. Bds/47

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Office of the R.L.A.

Statutes which impose pecuniary burden must be strictly construed, and in case of reasonable doubt the contruction most beneficial to the subject is to be adopted. Under section 95 of the Bombay Local Boards Act, 1923 the Provincial Government may levy a cess not exceeding two annas on every rupee of water rate leviable under the provisions of the Bombay Irrigation Act, 1879. Section 57 of the latter enactment itself contrasts the expressions "leviable" and "payable" and "recoverable". The arrears which still remain payable after 1st August 1946 cannot be described as leviable after that date; they were leviable before, but have now become only recoverable. Following the strict language of section 95 of the Bombay Local Boards Act, 1923, the arrears would have to be exempted from the levy of the new cess. The R.L.A.'s opinion which was based upon the use of the word "payable" in section 93(a) must, therefore, be distinguished.

Id./ P.M.L 23/5/47

Remembrancer of Legal Affairs.

U.O. to H.& L.G. Deptt, No. 6332 dated the 23rd May 1947.

SLR. 7/6/66

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It is presumed that the District Local Board, Nasik, is established for the entire Nasik District as constituted under the Bombay Land Revenue Code, 1879(section 4(1) of the Bombay Local Boards Act, 1923), and that the G.I.P. Railway area at Manmad is not excluded therefrom. That area being excluded from the limits of the municipal district thus forms part of the area for which the District Local Board of Nasik has been constituted. Consequently that Board will have to make adequate provisions for the maintenance of a primary school for children in the G.I.P.Rly area at Manmad even though the G.I.P. Railway is not paying any tax to the district local board (see clause (d) of section 50 of the Bombay Local Boards Act, 1923).

Id./ P.M.L. 23/4

O.C. Remembrancer of Legal Affairs.

U.R. to E.D. , No. 4161 dated the 24th April 1947.

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office of the B.L.A.

In his opinion No. 6363, dated the 11th August 1938 the B.L.A. opined that a resignation tendered under section 15A of the Bombay District Municipal Act, 1901, would take e effect from the date on which it was tendered. In his opinion No. 1-0- dated the 13th August 1939 the B.L.A. observed that a notice of resignation under section 15A of the Bombay District Municipal Act, 1901 would not be effecti ve until it is actually received by the Commissioner to whom it is to be given. Apparently there is conflict between the two opinions, but the B.L.A. in the latter opinion stated that the facts of the case in the former opinion were peculia and hence that case could be distinguished. It follows, therefore, that the latter opinion represents the correct legal position and the B.L.A.'s opinion No. 2521, dated the 7th April 1943 is consistent with it. Section 23(2) of the Bombay Local Boards Act, 1923, is in terms similar to sectio 15A of the Bombay District Municipal Act, 1901. Consequentl the resignation of the office of President, tendered by Mr. H.P. Mehta in the present case could be effective only when it has reached the Commissioner and it was open to Mr. H.P. Mehta to withdraw his resignation before it could be so effective that is to say, before it reached the Commissi oner. Since both the letter of resignation and the letter of w thdrawl reached the Commissioner on one and the same date, it would be difficult to say which of them first reached the Commissioner. In the circumstance it would be safer to hold that Mr. H.P.Mehta withdrew his resignation before it reached the Commissioner.

Id. P.M.L 7/6

O.C. Remembrancer of Legal Affairs.

U.R. to H. and L.G.M. No. 6974 dated the 7th June 1947

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A meeting of the District Local Board, Broach was held on 7th September 1946 when one of the members moved a resolution congratulating the Vice President of the Interim Government. This resolution was ruled out by the President of the D.L.B. on the ground that the matter was not included on the agenda. As a protest against the action of the President 12 members left the meeting and thereafter, it is alleged, certain Resolutions in which the Presidnet and the Chief Officer were interested were passed. Thereafter the absentee members sent a requisition under section 35(2)(a) of the Bombay Local Boards Act, 1923, to call a special meeting to consider a proposal to cancel the Resolutions passed at the previous meeting held on the 7th Septemeber 1946. In pursuance of the requisition a meeting was convened on 17th October 1946. The first item for consideration at this meeting was the approval of the minutes of the previous meeting held on 7/9/46. When votes were being taken as to whether the minutes should be confirmed or not, members, who had left the previous meeting were not allowed by the President to give their votes on the proposal. Thereafter the proposal contained in the requisition was taken up and the President ruled it out of order.

On these facts the questions for the consideration of the B.L.A. are as follows:-

(1) Whether the President was right in disallowing members who were not present from the beginning to the end of the previous meeting, to vote on the proposal regarding the confirmation of the minutes of the previous meeting;

(2) Whether the President was right in disallowing the proposal seeking cancellation of the resolution passed at the previous meeting even though the proposal was mentioned in the requisition made under section 35(2)(a) of the Bombay Local Boards Act, 1923.

(3) Whether the regulations framed under section 35(1) of the Bombay Local Boards Act, 1923, requiring confimation of the minutes are ultra vires,

Question 1 :- Section 35(2)(k) of the Bombay Local Boards Act, 1923, requires that minutes should be kept of the proceedings at each meeting of the board which shall be signed, as soon as practicable, by the president, vice president or chairman of such meeting. Rule 14 of the Bombay Local Boards Rules under section 133(h) requires that a copy of the minutes of each meeting of a district local board kept under clause (k) of subsection (2) of section 35 of the Act, shall be certified as soon after the meeting as is practicable by the President to the Collector of the District. Neither section 35(2)(k) nor Rule 14 appears to contemplate confirmation of the minutes but under the Regulations of the Broach , District Local Board (similar Regulations are framed by other D.L.Bs.) framed under section 35(1) it is provided that:-

"After the presiding authority has taken his seat, the minutes of the last previous meeting shall be read if so desired by any memeber, otherwise they will be taken as read. If read they shall be signed after confirmation of the meeting by the presiding authority".

"If any member present objects to the minutes as having been incorrectly recoreded the presiding authority shall after taking the sense of the meeting make such amendments in the minutes as the meeting think proper and the amended minutes shall then be confirmed and signed by the presiding authority".

All that this regulation provides is that if so desired by any member the minutes of the previous meeting shall be read, otherwise they will be taken as read, and that when minutes are incorrectly or incompletely recoreded, the necessary amendment in the minutes shall be made after taking the sense of the meeting. The reason for such a provision is obvious.

" No alteration should be made in the minutes except to correct obvious errors. Occasionally a bonafide mistake is made, when the correction should be made only with the consent of the meeting. Any discussion on the minutes as to its accuracy, is out of order and the Chairman should rule accordingly. Question arising out of the minutes are permissible with the consent of the meeting if only for information and not for discussion"

It is unwise for a Chairman to sign the minutes without getting them verified as correct by a meeting. The usual method is to bring up the minutes at the next succeeding meeting when they are read if not previously circulated. Very often however, they are taken as read. The chairman then asks whether in the opinion of the meeting they are correct report of the proceedings, and, if the answer is in the affirmative he formally signs them. It is not necessary that he should have been present at the meetings at which they are taken. If there is a conflict of opinion as to their accuracy, an amendment to the motion of their correctness, embodying the suggested alteration, should be put to the meeting and it is obvious that those who were not present at the preceding meeting should not take part in the discussion or vote. In any event, they are only prima facie evidence of what was done at the meeting. Minutes are not exclusive evidence of what takes place at a meeting... . When minutes are duly signed by the chairman they are prima facie evidence of what has been done at the meeting until the contrary is proved. The confirmation of the minutes by a meeting merely verifies their accuracy; it does not necessarily mean that such minutes are adopted or that the resolution therein are confirmed or ratified" (Vide pp. 39-40 of Crew on Meetings). The regulation in question authorizes the presiding authority to sign the minutes after they are confirmed by the meeting As regards the interpretation of the word "confirm" it is held that word "confirm" sometimes means merely verify : it is

commonly used in that sense at the meetings of public bodies wh confirm the minutes of their last meeting, not meaning thereby that they give them force, but merely that they declare them accurate". (Per Capbell C.J. in the Queen V.Mayor of York, 1863 I.E. and B. p. 594). It will thus be clear that the President, District local Board, Broach was quite justified in disallowing the members who were absent from the preceding meeting , from taking part in the discussion of the minutes and from exercising their right to vote.

Question 2 The president ruled out the proposal on th ground that it ws not in conformity with clause (1) of section 35(2). The Collector considers that the President was not entitled to rule out as the proposal was mentioned in the requisition. The fact that the proposal was mentioned in the requisition in pursuance of which the meeting was called does not appear to confer any sanctity on the proposal The proposal clearly offended against clause (1) of section 35(2) and consequenlty it was validly disallowed by the president.

Question 3 Section 35(1) empowers, a local board to make regulations, consistent with this Act and with rules or orders made by the Provincial Government in this behalf under clause (c) of section 133 with respect to the place, day, hour, notice, management and adjournment of such meetings and generally with respect to the transaction of business, subject to ~~xxxxxxxxxx~~ provisions of the subsections of sectio 35. Government have not made any rules under section 133(c) touching the matter of meetings. The Regulations regarding confirmation do not also appear to be inconsistent with any provision of the Act. In the circumstance s the Regulations are not ultra vires. The observa ions of ~~Mr~~ M/S Gandhi and Patel at p. 194-195 appear to be distinguishable

Id./ .....

O.C. Remembrancer of Legal Affairs.

U.R. to H.& L. G.D. No. 8273. dated the 12th Aug. 1947.

Office of the R.L.A.

The resolution of the Board under section 93(1) of the Bombay Local Boards Act, 1923 must be unconditional . The Board should therefore be asked to pass another resolution wi-thout attaching any condition.

Id./.....

O.C. Remembrancer of Legal Affairs.

U.R. to H.& L.G.D. No. 8357 dated the 14th August 47.

Office of the R.L.A.

Whether Government can claim from the District Local Boards leave salary in respect of the staff of the veterinary dispensaries transferred to Government under Government Resolution (Reconstruction Department) No. 9982/39, dated the 7th March 1946 would depend upon the terms and conditions subject to which such transfer was made. It appears from the aforesaid G.R, that Government did not impose any condition or term. If so, it would not be competent for Government to claim any leave salary in respect of the staff transferred to Government.

Id/P.V.L. 1-9-1947

O.C. Remembrancer of Legal Affairs.

U.R. to A.& R.D.D. No. 8910 , dated the 2nd September 1947

Office of the D.L.A.

The view taken by the D.L. Bijapur is correct (see Emperor v. Vishnu Tatyaba Naik, 42 B.L.R. 1193 and Narull agshet and another v. Emperor A.I.R. 1937 Sind 129). This result is unfortunate; and had arisen out of the amendment made by Bombay Act, 13 of 1935 whereby the words "prosecuti or other legal proceeding" were inserted in a provision which was originally intended to apply to suits by aggrieve parties against local authorities or their subordinates. There is no justification for giving this additional protec tion to servants or members of local authorities ho commi crimes. I fully subscribe to the dictum of Beaumont C.J. in Emperor v.Naik , 41 Bom. L.R. 1227 that these protection clauses which are so commonly inserted in Acts conferring powers on public authorities or their officials were never intended to protect a dishonest rascal from the consequence of his rascality; they are only intended to protect people who from excess of zeal or negligence or other cause exceed their powers. Compare also the discussion in the dissentin judgment of Rupchand Bilaram A.J.C. in the Sind case cited above. Steps should be taken immediantely to amend the Act and other cognate Acts containing similar rovisions. In the meantime, the offending servants of the D.L.B. must be got dismissed.

Sd./ P.V.L. 16/9

O.C. Remembrancer of Legal Affair

U.O. to H.D. No. 9333 dated the 19th September 1947.

Submitted.

It appears that under G.R. Vide Ship/B below G.D. No. 5612/33(1) dated 15-2-47, levy of local fund cess at the enhanced rate of As. 3 was sanctined for Surat District. The orders were given effect to from the date of the G.R, and in view of the opinion of the R.L.A. No. 5781 dated 4 8-45 the Collr. was informed that a cess of three annas should be levied on every rupee of land revenue in the Surat District with effect from the date of the G.R.

Ship Li File 9 Local Boards /45

In his petition at pp. 1-4 ante, one Mr. Shukla has complained that the levy of local fund cess at the enhanced rate on the land revenue payable in 1946-47 is illegal and has threatened to take the matters to a court of law, if no fair and satisfactory solution of the problem is arrived at by Govt.

There is no substance in the contentions of the applicant. The facts are similar to those underlying R.L.A.'s opinion No. 5781 dated 4-8-45. Attention is also invited to R.L.A.'s No. 348 dated 15.1.46. There is no objection to informing the applicant, Mr. Shukla, as proposed in the H. & L.G.D. office note dated 18-9-47. If approved the papers may be "seen and returned".

pp.31-34 of O. Local Boards/46 & p.19 of O.Local Boards /46

Id/ S.R. 7/10

~~Initials~~ R A.L.R. Id. /R.T.K. 8/1

R.L.A. Id./ F.M.L. 8/10

U.O.R. to H and L.G.D. No. 9888 dated 13-10-1947

Office of the R.L.A.

The question referred to the R.L.A. is whether it is one of the statutory duties of Local Boards to make provision for veterinary dispensaries. Under section 50(b) it shall be the duty of Local Boards, so far as the local fund at their disposal will allow, to make adequate provision for the areas respectively subject to their authority in regard to the construction and repair of hospitals, dispensaries, markets, dharmashalas and other public buildings and the visiting, managment & maintenance of these institutions. Under section 81(1)(b the District Local Boards shall be responsible for the maintenance of public vaccination and dispensaries and other similar local services and institutions of general benefit to the district. When these provisions are read together, it would seem that the word "institutions occurring in clause(b) of section 50 would include also the other public buildings mentioned in that clause. Veterinary dispensaries would undoubtedly come under the category of local services and institutions of general benefit to the district, and in view of clause (b) of section 50 it can be held that so far as the local funds their disposal will allow, it is one of the obligatory duties of Local Boards to construct and also maintain and manage veterinary dispensaries.

Id/ P.M.L. 17/11
O.C. Remembrancer of Legal Affairs.
U.R. to A. & R.D. No. 10919 dated the 17th November 47.